

21. DRUG AND ALCOHOL PROGRAM

BASIC REQUIREMENT

Grantees receiving Urbanized Area Formula Program (Section 5307), Nonurbanized Area Formula Program (Section 5311), or Capital Investment Program (Section 5309) funds must have a drug and alcohol testing program in place for all safety-sensitive employees.

AREAS TO BE EXAMINED

1. *Drug and Alcohol Testing of Safety-sensitive Employees*
2. *Policy Statement on Prohibited Drug Use and Alcohol Misuse in the Workplace*
3. *Types of Tests and Substances*
4. *Rate of Random Testing*
5. *Post-Accident Determinations*
6. *New Hire Data*
7. *Records Control*
8. *MIS Reporting*
9. *Monitoring Program Vendors (e.g., Collection Sites, MROs, and SAP)*

REFERENCES

1. [49 CFR Part 655](#), "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations"

2. [49 CFR Part 40](#), "Procedures for Transportation Workplace Drug Testing Programs"

USEFUL WEB LINKS

[FTA Drug and Alcohol Testing Homepage](#)

[Newsletters](#)

[Drug and Alcohol MIS Reporting](#)

[Drug and Alcohol Training](#)

[Technical Assistance](#)

[Drug and Alcohol Publications](#)

[Implementation Guidelines for Drug and Alcohol Regulations in Mass Transit](#)

[Drug and Alcohol Program Compliance Audit Questionnaires](#)

APPLICABILITY

FTA program funds can be segregated from other funds. Therefore, FTA drug and alcohol testing requirements may not apply to grantees that receive FTA funds exclusively for facilities if these funds can be segregated from other program funds. If a question arises whether FTA funds can be segregated, please contact your project manager, who can contact the FTA Drug and Alcohol Program Manager, Jerry Powers at gerald.powers@dot.gov.

QUESTIONS FOR THE REVIEW

1. *Has FTA conducted a drug and alcohol program compliance audit in the past two Federal fiscal years? If yes, when was the site visit? Is an audit scheduled for the current Federal fiscal year?*

EXPLANATION

As part of its project oversight functions, FTA periodically conducts drug and alcohol audits of selected grantees. Even if an audit is scheduled for the current Federal fiscal year or has been recently conducted, all questions in this section are still asked. If an audit has been recently conducted, obtain a copy of the most recent report for input into the review.

REFERENCE

None

SOURCES OF INFORMATION

The reviewer will contact the regional office to determine if a drug and alcohol program compliance audit is scheduled for the current Federal fiscal year or has been conducted during the past two Federal fiscal years.

DETERMINATION

None

SUGGESTED CORRECTIVE ACTION

None

2. *Does the grantee have a drug and alcohol testing program for safety-sensitive employees as defined by FTA? Do subrecipients, contractors, subcontractors and lessees with safety-sensitive employees have drug and alcohol testing programs?*

EXPLANATION

Grantees and their subrecipients, contractors, subcontractors, and lessees are required to have a drug and alcohol testing program for safety-sensitive employees. Volunteer drivers are not subject to testing unless the volunteers are required to hold a commercial driver's license (CDL) or receive remuneration in excess of expenses incurred while engaged in a safety-sensitive function. Safety-sensitive employees are employees that perform the following functions:

- operating a revenue vehicle including when not in revenue service
- operating a non-revenue vehicle when required to be operated by a holder of a CDL
- controlling dispatch or movement of a revenue service vehicle
- maintaining, repairing, overhauling, and rebuilding a revenue service vehicle or equipment used in revenue service with the exception of:
 - all maintenance contractors of grantees in UZAs under 200,000; and
 - subcontractors of maintenance contractors*Note that contractors that provide maintenance services to an operations contractor are subject to FTA's drug and alcohol testing regulations.*
- carrying a firearm for security purposes

Grantees that operate a commuter railroad regulated by the Federal Railroad Administration (FRA) must follow FRA regulations for its railroad operations and follow FTA regulations for its non-railroad operations. Unless supervised by the local police department, employees carrying a firearm for security purposes are covered under FTA regulations, as they are not listed as covered employees by FRA 49 USC Sec 21101.

Grantees that operate a ferry system are considered to be in compliance with FTA regulations when they comply with the U.S. Coast Guard's (USCG's) chemical and alcohol testing requirements. However, those ferry operations are subject to FTA's random alcohol testing requirement for employees considered safety-sensitive by the USCG (crew members with a merchant mariners document or under a certificate of inspection), since the USCG does not have a similar requirement.

Grantees that have employees, subrecipients, contractors, subcontractors, or lessees that are subject to drug and alcohol testing as part of a Federal Motor Carrier Safety Administration (FMCSA) program must ensure that any individual who also provides services to the transit system is subject to FTA regulations while performing FTA-defined safety-sensitive functions. For example, a municipal transit system may have maintenance performed by a mechanic employed by the city government who repairs transit vehicles as well as other city-operated equipment. At times when this employee works on transit vehicles, he or she would be subject to FTA regulations.

Contractors performing safety-sensitive work, such as tire maintenance and overhaul or rebuild of vehicles, engines and parts or body work are subject to FTA

regulations, unless the work is done on an ad-hoc (non-routine) basis. Warranty work performed by employees of the bus manufacturer is not subject to the regulations. Also, vendors from whom grantees purchase or exchange rebuilt engines or other components are not subject to the regulations unless that work is regular and on-going.

If a grantee utilizes taxicab companies to provide transit services (e.g., paratransit), the applicability of drug and alcohol testing depends on the nature of the service. If a grantee has a contract with one or more taxicab companies and schedules and dispatches the trips, then the drug and alcohol testing regulations apply. However, FTA regulations do not apply if a transit patron (or broker) chooses the taxicab company, even if there is only one company available. The regulations do not apply to taxicab maintenance contractors, provided the primary purpose of the taxicab company is not public transit service.

Off-duty police officers under contract to the grantee or a contractor to a grantee are subject to FTA drug and alcohol testing. Police officers who, as part of their normal duties, patrol public transit facilities are not subject to FTA testing. When a grantee contracts the local police department but does not supervise the officers and the officers also respond to nontransit-related police calls, the officers are not subject to FTA's drug and alcohol rules.

The grantee can require subrecipients, contractors, subcontractors, and lessees to have their own program or can include them in its program.

REFERENCE

49 CFR [655.3](#) and [655.4](#)

[Body work interpretation letter](#)

[Police officer interpretation letter](#)

SOURCES OF INFORMATION

The reviewer will ask the grantee to provide evidence that all safety-sensitive employees (including subrecipients, contractors, subcontractors, and lessee employees) are covered by a drug and alcohol testing program. A list of all contractors and subcontractors will be requested in order to determine if the requirement applies.

DETERMINATION

The grantee is deficient if it has not adopted an FTA program.

The grantee is deficient if any of its subrecipients, contractors, subcontractors, or lessees has not adopted an FTA program.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to submit evidence to the FTA regional office that it has developed and

implemented a drug and alcohol testing program for all covered employees.

The grantee will be directed to submit evidence to the FTA regional office that its subrecipients, contractors, subcontractors, or lessees implemented a program.

3. *Do the grantee and its subrecipients, contractors, subcontractors, and lessees have a drug and alcohol policy as required by FTA drug and alcohol regulations? Do the policies contain the required elements?*

EXPLANATION

The grantee and its subrecipients, contractors, subcontractors, and lessees covered by 49 CFR Part 655 must have a drug and alcohol policy detailing the provisions of their drug and alcohol program. The policy should cover all the provisions noted below and should reflect all updates and regulation amendments.

The following checklist identifies the minimum requirements of a policy as defined by 49 CFR 655.15:

- Proof of policy adoption by the appropriate governing body with effective date indicated
- Identity of the person designated by the employer to answer questions about the anti-drug and alcohol misuse program
- Categories of employees who are subject to testing
- Prohibited behavior, including when the regulations prohibit the use of alcohol and drugs
- Testing circumstances for drugs and alcohol (i.e., pre-employment, random, post-accident, reasonable suspicion, return-to-duty, and follow-up testing)
- Drug and alcohol testing procedures consistent with 49 CFR Part 40, as amended
- Requirement that covered employees submit to drug and alcohol testing administered in accordance with FTA regulations
- Description of the behavior and circumstances that constitute a refusal to take a drug and/or alcohol test and a statement that a refusal constitutes a verified positive test result. The following describes refusals under the DOT program:
 1. Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer after being directed to do so by the employer
 2. Fail to remain at the testing site until the testing process is complete (an employee who leaves the testing site before the

testing process commences for a pre-employment test is not deemed to have refused to test)

3. Fail to provide a urine specimen for any drug test required by this part or DOT agency regulations
4. Fail to provide a sufficient amount of urine when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure
5. Fail or decline to take an additional drug test the employer or collector has directed you to take
6. Fail to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or employer. In the case of a pre-employment drug test, the employee is deemed to have refused to test on this basis only if the pre-employment test is conducted following a contingent offer of employment. If there was no contingent offer of employment, the MRO will cancel the test.
7. Fail to cooperate with any part of the testing process (e.g., refuse to empty pockets when directed by the collector, behave in a confrontational way that disrupts the collection process, fail to wash hands after being directed to do so by the collector)
8. In the case of a directly observed or monitored collection in a drug test, fail to permit the observation or monitoring of your provision of a specimen
9. For an observed collection, fail to follow the observer's instructions to raise your clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if you have any type of prosthetic or other device that could be used to interfere with the collection process
10. Possess or wear a prosthetic or other device that could be used to interfere with the collection process
11. Admit to the collector or MRO that you adulterated or substituted the specimen

Instead of listing all the refusals, the policy may state that refusals to test are listed in 49 CFR Part 40 as amended or 49 CFR 40.161 as amended for urine collections and 49 CFR 40.261 as amended for breath tests. The policy should then state that a copy of 49 CFR Part 40 is available upon request.

- Description of the consequences for a covered employee who has a verified positive drug test result or a confirmed alcohol test with an alcohol concentration of 0.04 or greater. If the system has a second chance policy, a description of the evaluation and treatment processes must be included.
- Description of the consequences for covered employees found to have an alcohol concentration of 0.02 or greater but less than 0.04

In addition to the requirements listed above, the policy should include the grantee's policy toward retesting of negative dilute urine collections as required by 49 CFR 40.197 which states that if the MRO informs the agency that a *negative* drug test was dilute, the agency may, but is not required to, direct the employee to take another test immediately. All employees must be treated the same for this purpose. For example, the grantee must not retest some employees and not others. The grantee may retest for some types of tests (e.g., pre-employment tests) and not others. The policy should state whether or not immediate retesting for negative dilutes is required and, if required, that the second test will be the test of record.

Some grantees may have modeled their testing programs after FMCSA regulations (49 CFR Part 382). FMCSA regulations do not meet FTA requirements. For example, FMCSA only covers CDL holders. If the program refers to "covered employee" as an employee with a commercial driver's license, the program is probably fashioned after FMCSA regulations.

REFERENCE

49 CFR 655.15
49 CFR 40.191; 40.197; 40.261
49 CFR Part 382

SOURCES OF INFORMATION

The grantee's drug and alcohol policy and up to three policies of any subrecipients, contractors, subcontractors, or lessees with safety-sensitive employees will be examined. If the grantee is covered by FRA, the reviewer will ensure that employees who carry firearms for security purposes are covered by an FTA drug and alcohol testing policy. If the grantee is covered by USCG, the reviewer will ensure that the policy requires crew members to submit to random alcohol tests under FTA authority.

DETERMINATION

The grantee is deficient if its policy does not include all of the above provisions required by the regulations.

The grantee is deficient if the policies of subrecipients, contractors, subcontractors, or lessees that were reviewed do not include all of the required provisions required by the regulations or have not been updated

to reflect updates and/or amendments to the regulations.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to submit to the FTA regional office an amended policy that has been adopted by the governing board or other "final authority", and re-communicate the policy to all affected employees.

The grantee will be directed to submit to the FTA regional office the amended policy of the subrecipient, contractor, subcontractor, or lessee.

4. *Do the grantee, subrecipients, contractors, subcontractors, and lessees conduct the required types of drug and alcohol testing?*
5. *Do the grantee, subrecipients, contractors, subcontractors and lessees test for the required substances?*

EXPLANATION

Six types of testing are required by the drug and alcohol testing regulations:

- Pre-employment (mandatory for drugs and optional for alcohol)
- Random
- Post-accident
- Reasonable suspicion
- Return to duty (only for employers with a second chance policy)
- Follow-up (only for employers with a second chance policy)

If the grantee conducts pre-employment alcohol tests, the testing is conducted under FTA authority and the grantee must follow Part 40 testing procedures. Employees who have returned to duty from an absence of 90 days or more *and* have been removed from the random testing pool during that time must pass a pre-employment test(s), not a return to duty, test, before being placed back into safety-sensitive duty.

If the grantee has a second chance policy for employees who admit to drug or alcohol use outside the testing process, any return to duty and follow up testing is done under the employer's, not FTA's, authority as 49 CFR Part 655 does not address employees who admit to drug or alcohol use.

The grantee is required to test for the following substances: marijuana, cocaine, opiates, phencyclidine, and amphetamines (includes ecstasy

(MDMA)) – employer may or may not add this separately in policy), as well as alcohol.

REFERENCE

49 CFR [655.31](#), [655.33](#), [655.34](#), [655.41](#), [655.42](#), [655.43](#), [655.44](#), [655.45](#), [655.46](#), and [655.47](#)

SOURCES OF INFORMATION

The grantee's drug and alcohol policy and the policies of up to three subrecipients, contractors, subcontractors, or lessees will be examined to ensure that they indicate clearly when and under what circumstances employees will be tested for drugs and alcohol. The reviewer will not examine specific employee records.

DETERMINATION

The grantee is deficient if it is not conducting the required tests or required substances are not being tested.

The grantee is deficient if subrecipients, contractors, subcontractors, or lessees are not conducting the required tests or substances are not being tested.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to submit to the FTA regional office an amended policy that has been adopted by the governing board or other "final authority", and re-communicate the policy to all affected employees. The grantee will be directed to implement the testing program immediately if any requirement is lacking.

The grantee will be directed to submit to the FTA regional office the amended policy of the subrecipient, contractor, subcontractor, or lessee.

6. *Are the minimum random testing rates of 25 percent for drugs and 10 percent for alcohol achieved?*

EXPLANATION

Random testing rates of safety sensitive employees for drugs and alcohol must be conducted at levels specified by FTA. The current minimum annual random testing rate for drugs is 25 percent of the number of safety sensitive employees. The minimum annual random testing rate for alcohol is 10 percent.

Grantees that have a separate random pool for FTA safety sensitive employees must be able to document that they are meeting the required random testing rates. Grantees that are part of a larger consortium random pool must be able to document that the consortium's random testing rates meet the FTA required rates.

REFERENCE

[49 CFR 655.45](#)

SOURCES OF INFORMATION

To determine the appropriate number of random tests for the most recent calendar year, the reviewer will perform the calculations in the review package. Note that most grantees and consortiums perform random selections four times a year.

DETERMINATION

The grantee is deficient if, as of the date of the site visit, the number of random tests is below 90 percent of the required number for the year.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to submit to the FTA regional office a plan to bring the random testing rate to the required level.

7. *Do the grantee, subrecipients, contractors, subcontractors, and lessees conduct post accident testing under FTA authority only when the conditions set forth in Part 655 are met?*

EXPLANATION

FTA requires that a DOT post accident test be administered under two circumstances: 1) in the event of a fatal accident and 2) in the event of a non-fatal accident.

A fatal accident is defined as an occurrence associated with the operation of a transit revenue vehicle or ancillary vehicle (non-revenue requiring a CDL or transit police), which results in the loss of a life.

A non-fatal accident is an occurrence associated with the operation of a transit revenue vehicle or ancillary vehicle, defined by the following:

- One or more individuals is immediately transported for medical treatment away from the accident
- Any vehicle incurs disabling damage requiring a tow truck
- A rail transit vehicle is taken out of service as a result of the accident

Following a fatal accident involving a transit vehicle, grantees, subrecipients, contractors, subcontractors, and lessees with safety-sensitive employees are required to test all surviving covered employees operating the vehicle at the time of the accident and, using the best available information at the time of the decision, any other covered employee whose performance may have contributed to the accident.

Following a nonfatal accident involving a transit vehicle, grantees, subrecipients, contractors, subcontractors, and lessees with safety-sensitive employees are required to test all covered employees operating the vehicle and any other covered employee whose performance may have contributed to the accident unless the employer determines that an employee's performance can be completely discounted as a contributing factor to the accident. A decision not to test is made using the best information available at the time of the decision and must be documented in detail, including the decision-making process used to make the determination.

Post-accident testing for "accidents" that do not meet the definition of an accident under Part 655 must be done under the grantee's own authority and non-DOT custody and control forms and alcohol testing forms must be used.

REFERENCE

[49 CFR 655.44](#)

SOURCES OF INFORMATION

The reviewer will request a copy of a post-accident form, if used. During the site visit, a sample of accident reports in which post accident testing was performed, as well as copies of accident reports in which post accident testing was not performed will be examined.

DETERMINATION

The grantee is deficient if a covered employee was not tested after an accident that required testing. The grantee is deficient if a covered employee was not tested following a nonfatal accident and the grantee cannot properly document its decision not to test. The grantee is deficient if it conducted a post-accident test under FTA's authority for an accident that does not meet the Part 655 definition of accident.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to submit to the FTA regional office a process for making proper post accident determinations, including procedures to document the decision-making process.

The grantee will be directed to submit to the FTA regional office a process for ensuring that post accident testing for only accidents that meet the definition of an accident under Part 655 are done under FTA's authority.

The grantee will be directed to submit to the FTA regional office procedures for ensuring that subrecipients, contractors, subcontractors, and lessees with safety-sensitive employees make proper post accident testing decisions.

8. Do the grantee, subrecipients, contractors, subcontractors, and lessees check on the drug and alcohol testing records of new hires and transfers that they are intending to use to perform safety-sensitive duties?

EXPLANATION

Grantees, subrecipients, contractors, subcontractors, and lessees, after obtaining an employee's written consent, must request information on the DOT drug and alcohol testing history of any employee who is seeking to begin performance of safety-sensitive duties for the grantee for the first time (i.e., a new hire, or if an employee transfers into a safety-sensitive position). Grantees must request the following information from DOT-regulated employers who have employed the employee during any period during the two years before the date of the employee's application or transfer:

- Alcohol tests with a result of 0.04 or higher alcohol concentration
- Verified positive drug tests
- Refusals to be tested (including verified adulterated or substituted drug test results)
- Other violations of DOT agency drug and alcohol testing regulations
- The employee's successful completion of DOT return-to-duty requirements (including follow-up tests), if applicable

If the previous employer does not have information about the return-to-duty process (e.g., for an employer who did not hire an employee who tested positive on a pre-employment test), the grantee must obtain this information from the employee.

The grantee must obtain and review this information before the employee first performs safety-sensitive functions, if feasible. If this is not feasible, the grantee must obtain and review the information as soon as possible. After 30 days, the grantee must not permit the employee to perform safety-sensitive functions unless it has obtained or made and documented a good faith effort to obtain this information.

If the employee refuses to provide written consent, the grantee must not permit the employee to perform safety-sensitive functions. If the grantee obtains information that the employee has violated a DOT agency drug and alcohol regulation, it must not use the employee to perform safety-sensitive functions unless it also obtains information that the employee has subsequently complied with return-to-duty requirements.

Grantees must also ask the employee whether he or she has tested positive or refused to test on any pre-employment drug or alcohol test administered by an employer to which the employee applied for, but did

not obtain, safety-sensitive transportation work covered by DOT agency drug and alcohol testing rules during the past two years. If the employee admits that he or she had a positive test or a refusal to test, the grantee must not use the employee to perform safety-sensitive functions until and unless the employee documents successful completion of the return-to-duty process. The employee records must be maintained for three years.

REFERENCE

[49 CFR 40.25](#)

SOURCES OF INFORMATION

A copy of the applicant consent form and the letter requesting drug and alcohol testing information from prior DOT employers will be reviewed to ensure that the forms request the required information for the past two, not three years, as per 49 CFR part 382. The reviewer will not request to see copies of employee drug test results, consent forms, and/or any other potentially confidential material.

DETERMINATION

The grantee is deficient if it does not obtain an applicant's consent, the required information, or the information for the past two years.

The grantee is deficient if subrecipients, contractors, subcontractors, or lessees do not obtain an applicant's consent, the required information, or the information for the past two years.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to submit to the FTA regional office a process for ensuring that the previous drug and alcohol testing records of first-time safety sensitive employees are reviewed.

The grantee will be directed to submit to the FTA regional office procedures for ensuring that subrecipients, contractors, subcontractors, and lessees review the previous drug and alcohol testing records of first-time safety-sensitive employees.

9. Are drug and alcohol testing program records maintained in a secure location with controlled access?

EXPLANATION

The grantee, subrecipients, contractors, subcontractors, and lessees must maintain records on program administration and the test results of individuals for whom it has testing responsibility. The records must be maintained by the grantee in a secure location with controlled access. If a consortium is used to administer the testing program, the consortium can maintain some or all of the records. It is necessary, under this circumstance, for the employer to maintain

a duplicate set of records. As an example, program records should be maintained in locked file cabinets and a locked file room, with a limited number of keys that cannot be duplicated without proper authorization. In addition, only the program manager and his/her designee(s) should have access to the keys.

REFERENCE

[49 CFR 655.71](#)

SOURCES OF INFORMATION

The reviewer will ask the grantee to document how records are stored.

DETERMINATION

The grantee is deficient if it does not maintain drug and alcohol testing program records in a secure location with controlled access.

The grantee is deficient if subrecipients, contractors, subcontractors, or lessees do not maintain drug and alcohol testing program records in a secure location with controlled access.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to submit to the FTA regional office documentation that is has moved program records to a secure location with controlled access.

The grantee will be directed to submit to the FTA regional office procedures for ensuring that subrecipients, contractors, subcontractors, and lessees store drug and alcohol program records in a secure location with controlled access.

- 10.** *Has the grantee submitted annual calendar year Management Information System (MIS) reports for itself, subrecipients, contractors, subcontractors, and lessees summarizing drug and alcohol test results as requested by FTA? Were the reports submitted by March 15?*

EXPLANATION

The grantee must prepare, maintain, and submit to FTA annual MIS reports for itself and collect, maintain, and submit annual MIS reports for Section 5307, 5309, and 5311 subrecipients, contractors, subcontractors, and lessees with safety sensitive employees summarizing drug and alcohol program testing results. The reports cover the prior calendar year. For FTA funded ferry operations, grantees must submit the reports for random alcohol tests only. Grantees must retain copies of the reports for five years.

The standard MIS report forms, which are on the web, must be used "as-is;" they may not be combined or modified by a grantee and must be filled out completely. The MIS reports must be submitted to the FTA Office of Safety and Security or its designated agent by March 15 following the calendar year for which the reports were prepared. While paper reports are still accepted, FTA strongly encourages grantees to submit via the Internet at <http://damis.dot.gov/>.

REFERENCE

[49 CFR 655.72](#)

[MIS report forms](#)

SOURCES OF INFORMATION

The reviewer will examine copies of MIS reports submitted since the last review and discuss the grantee's process for obtaining MIS reports from subrecipients, contractors, subcontractors, and lessees with safety sensitive employees to ensure the reports are forwarded to FTA by March 15. MIS reports for the grantee and a sample of reports for subrecipients, contractors, subcontractors, and lessees will be examined.

DETERMINATION

The grantee is deficient if the MIS reports for the grantee, subrecipient, contractor, subcontractor, or lessee were not submitted.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to prepare or collect and submit all delinquent MIS forms. The grantee will be directed to develop a procedure for timely reporting of MIS forms. The grantee will be directed to submit the new procedure, documentation of its implementation, and copies of the MIS reports to the FTA regional office.

- 11.** *How does the grantee monitor subrecipients, contractors, subcontractors, and lessees with safety sensitive employees to ensure that their drug and alcohol testing programs are administered in accordance with the regulations?*
- 12.** *If the grantee contracts private carriers, how does it ensure that they comply with FTA drug and alcohol requirements?*

EXPLANATION

Grantees are responsible for passing through drug and alcohol testing requirements, providing technical assistance in understanding and meeting the requirements, and overseeing the drug and alcohol programs of subrecipients, contractors,

subcontractors, and lessees with safety-sensitive employees. The oversight program must ensure that all aspects of the drug and alcohol programs, including use of vendors and vendor activities, are in compliance with 49 CFR Part 655 Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations, as amended, and 49 CFR Part 40 Procedures for Transportation Workplace Drug and Alcohol Testing Programs, as amended.

FTA does not dictate how grantees must oversee the programs. However, elements of an effective oversight program will ensure:

- Drug and alcohol policies include required elements and are approved by the governing body
- Employees performing safety-sensitive functions are covered
- Marijuana, cocaine, opiates, phencyclidine, amphetamines, and alcohol are tested for
- Pre-employment, random, post-accident, reasonable suspicion, return-to-duty, and follow-up testing is conducted properly
- Proper forms are used, the forms are completed correctly, the records are stored in a secure location with limited access, and the records are maintained for the required amount of time
- Employees and supervisors have received the required training
- Testing performed under the employer's own authority is segregated from the testing done under FTA's authority (separate random testing pool, separate specimens, non-DOT forms used)
- MROs, SAPs, and collection site personnel have the required credentials and training
- Collections are performed properly and the employer ensures that CCFs are reviewed and that collection site procedures provide for adequate security

If a private intercity bus operator, such as Greyhound, receives FTA operating assistance or operates FTA funded buses, the operator may be subject to FTA drug and alcohol requirements. Private carriers are already covered by FMCSA drug and alcohol testing requirements (49 CFR Part 382) as drivers hold CDLs. However, if employees that perform safety-sensitive functions as defined by Part 655 (e.g., operating a revenue service vehicle, maintaining a revenue service vehicle, controlling dispatch or movement of a revenue service vehicle) spend more than half of their time in FTA purchased vehicles or FTA funded operations, then Part 655 applies. Once determined, the employee will be subject to pre-employment and random testing under FTA authority. The assignment of regulatory authority for reasonable suspicion and post-accident testing depends on the function an employee is performing at the time of the

incident/accident. Return-to-duty and follow-up tests are assigned to the modal administration that generated the initial positive test result. If subject to Part 655, the grantee must collect, retain, and submit MIS reports annually for the private carrier.

REFERENCE

[49 CFR 655.81](#)

[49 CFR 40.15](#)

[Implementation Guidelines for Drug and Alcohol Regulations in Mass Transit](#)

[Drug and Alcohol program compliance audit questionnaires](#)

SOURCES OF INFORMATION

Subrecipient agreements, contracts, leases, and monitoring documents (reports, questionnaires, site visit checklists) will be reviewed for a description and the details of the grantee's drug and alcohol oversight program. The reviewer will discuss the program with the grantee and review the files for the subrecipients, contractors, and lessees to be visited during the site visit.

DETERMINATION

The grantee is deficient if it does not oversee the drug and alcohol programs or if its oversight program is inadequate to ensure minimal compliance.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to submit to the FTA regional office a drug and alcohol oversight program for its subrecipients, contractors, subcontractors and lessees.

13. *How does the grantee monitor vendors (e.g., consortia, third party administrators, collection sites, MROs) that support its program and the programs of subrecipients, contractors, subcontractors, and lessees to ensure compliance with program requirements?*

EXPLANATION

The grantee is responsible for the integrity of the drug and alcohol testing program and the quality of testing services provided by vendors. Consequently, the grantee should have a written contract that references 49 CFR Part 40 with each vendor and should monitor the quality of its testing service vendors, including collection sites, MROs, and SAPs. Grantees need only ensure that testing laboratories are HHS certified.

The grantee should not assume that its vendors are following the correct procedures or that they are knowledgeable about FTA regulations. Note that the FTA does not prescribe how a grantee must monitor

its vendors. The grantee simply must show evidence that monitoring is being performed at some level. Examples of monitoring activities include maintaining on file copies of vendor qualifications, conducting periodic mock collections, investigating reports of employees or subrecipients of flawed procedures, requiring detailed explanations for cancelled tests, and documenting error correction training.

As it is the responsibility of the grantee to ensure that program records are accurate and current and that they comply fully with FTA regulations, the grantee should review its copies of CCFs and ATFs to ensure they are completed accurately and legibly and should follow up with collections when forms are not completed correctly or indicate proper procedures have not been followed.

Note that 49 CFR Part 40.121, as amended, requires MROs to be re-qualified and tested every five years

after the completion of a continuing education requirement.

REFERENCE

[49 CFR 40.15](#)

[HHS certified laboratories](#)

SOURCES OF INFORMATION

Copies of contracts and monitoring reports will be reviewed.

DETERMINATION

The grantee is deficient if it does not have contracts with vendors and/or it cannot show that it is monitoring vendor operations.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to submit to the FTA regional office executed contract(s) with vendor(s) and/or monitoring procedures.